1f 160 (3)

1

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Single Bench

SECOND APPEAL NO. 374 OF 2005

APPELLANTS/ PLAINTIFFS : 1. Gajanand, S/o Milawram Kashyap, Aged about 31 years.

2. Satanand, S/o Milawram Kashyap, Aged about 34 years.

3. Chandrika Prasad, S/o Milawram, Aged about 28 years.

4. Mantora, W/o Milawram Kurmi, Aged about 60 years,

All Cultivator, R/o Village Newasa, Tehsil & District Bilaspur (CG).

P.R. No. 2033/05
Presented by Shri SRJ Jaiswal
dated 29/7/05

RECEIVED COPY
29.7.05
CLERK to A. G. BILASPUR

Versus

RESPONDENTS/ DEFENDANTS : 1. State of Chhattisgarh, Through : The collector, Bilaspur (Chhattisgarh).

2. Fishers Agriculture Development Tribunal, Bilaspur, Through : The Chief Exeuctive Officer, Fisher Development Tribunbal, Bilaspur (C.G.).

3. Gram Panchayat, Newasa, Through Sarpanch, Gram Panchayat, Newasa, Post Jali, Tahsil & District Bilaspur (Chhattisgrh).

(3)

4. Sukhnandan, S/o Milawram, Aged about 30 years, R/o Village Newasa, Tehsil & District Bilaspur (CG).

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

आदेश पत्रक

मामला क्रमांक S.A. 374 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	30.11.2005 Shri H.S.Patel, learned counsel for the appellants. Shri J.D.Bajpai, learned G.A. with Shri Sanjeev Agrawal, learned P.L. for the State/respondent No. 1. Heard on admission. The appellants have preferred this second appeal as the suit for declaration and perpetual injunction with respect to the suit tank was dismissed by the trial Court and the appeal preferred by the appellant has also been rejected by the learned lower appellate Court by the impugned judgment and decree. Learned counsel for the appellants submits that both the Courts below have dismissed the suit of the appellant on the ground that the appellant has failed to prove his ownership over the suit tank. It is submitted that though the document of Ex.P/1 Nistar Patrak prepared by the revenue authorities shows the appellants as owner of the suit tank, the Courts below erroneously arrived to the conclusion that the appellants have failed to prove ownership of the suit tank. It is further submitted that during pendency of the first appeal the appellants moved an application under Order 41 Rule 27 read with Section 151 of the Code and prayed for adducing additional document and sought permission to file certified copy of Khasra Panchsala for the year 1928-29 (Annexure P/1) and Kistbandi Khatoni for the year 1954-55 to show Khasra No. 1423, area 2.20 acres is registered in the name of Ayodhya. However, the above application has also been rejected on the ground that the same has been filed belatedly without any due explanation.	

देखें

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

मामला क्रमांक S.A.374 ..... सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thus on the basis of the aforesaid submission, learned counsel for the appellants submits that the substantial question of law involved in this appeal is that "whether the lower appellate Court was justified in rejecting the application for permission to file additional document and whether the Courts below were justified in dismissing the suit on the ground that the plaintiffs have failed to prove possession of the forefathers in spite of entry of name of Milaouram in the Nistar Patrak of Ex.P/1?"

The suit is for the declaration and title over the suit tank and for perpetual injunction against the defendants against interference in the suit tank. From perusal of the evidence available on record, I am of the opinion that both the Courts below have correctly held that the appellants have failed to prove his ownership and possession over the suit tank. The above finding is based on correct appreciation of documentary and oral evidence available on record and it is also based on admission of the appellants that the tank in question has been vested with the State and they were aware of this fact since 2000. Even otherwise the revenue record the appellant intended to file relates to the year 1928-29 and the vesting of the tank in the State is subsequent to that period

Thus on the basis of aforesaid discussions, I am of the opinion that there is no question of law much less any substantial question of law involved for adjudication of this appeal. Accordingly, the appeal deserves to be dismissed and it is dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge

SP/FS/2005 - 20,000